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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to the Review of the California High Cost Fund B Program.

Rulemaking 06-06-028
(Filed June 29, 2006)

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)

ASSIGNED COMMISSIONERS' RULING REGARDING REQUEST OF CALTEL REGARDING THE USE OF COST MODELING RESULTS

On November 9, 2007, the California Association of Competitive Telephone Companies (CALTEL) filed a motion to intervene in Rulemaking (R.) 06-06-028. By ruling issued on November 15, 2007, CALTEL was granted party status in R.06-06-028. In the same motion, however, CALTEL requested certain rulings relating to "unbundled network element" (UNE) pricing issues. This ruling deals with that request. Although CALTEL filed its motion only in R.06-06-028 (the B-Fund proceeding), the motion also implicates UNE pricing issues being addressed in R. 93-04-003/I.93-04-002. Accordingly, to ensure that

proper notice is provided, this ruling is issued jointly by the Assigned Commissioners in both the B-Fund and UNE pricing proceedings.

In its motion, CALTEL states that in Decision (D.) 07-09-020, the Commission adopted the Hatfield Model (HM 5.3) for use in updating cost data to compute B-Fund support prospectively. The Commission indicated in D.07-09-020, however, that priority would be given to implementing a reverse auction as the basis to update cost data used to derive B-Fund support, with reliance on the HM 5.3 model as a secondary source, as needed.

In its motion, CALTEL expresses concern that AT&T and Verizon, the major incumbents, could use cost model results developed in the B-Fund proceeding to advocate for increases applicable to UNE rates that are at issue in R.93-04-003/I.93-04-002. CALTEL argues that the B-Fund proceeding is not the proper forum in which to establish generally applicable rates or methods applicable to cost model modifications. CALTEL indicates that it made a price cap proposal in the UNE proceeding which is intended to avoid resource-intensive cost modeling. CALTEL argues that the Commission should not pre-judge or undermine its UNE price proposal through any cost modeling that is developed in the B-Fund proceeding.

CALTEL thus asks that the Commission either 1) delay any cost proxy updates in the B-Fund proceeding until the Commission rules on CALTEL's price cap proposal in the UNE proceeding, or 2) rule that any B-fund cost proxy updates cannot be used by AT&T and Verizon as a basis for proposing future UNE rate increases.

No party responded to CALTEL's motion.

Discussion

The question of wholesale UNE price determinations is beyond the scope of the B-Fund proceeding which is focused on universal service issues relating to the provision of retail service. Therefore, there is no need for a ruling in the B-Fund proceeding, prescribing either the applicability or prohibitions of HM 5.3 modeling results for other purposes, such as in determining wholesale UNE pricing in R.93-04-003/I.93-04-002. A ruling, as requested by CALTEL, would exceed the scope of the B-Fund proceeding. CALTEL has thus failed to justify why any delay in the B-Fund proceeding is warranted as a result of any schedule that may apply in the UNE proceeding in R.93-04-003/I.93-04-002.

Likewise, it is beyond the scope of the B-Fund proceeding to address how future UNE price adjustments should be determined. Accordingly, the request for a ruling, as CALTEL seeks, for direction or restrictions on the use of modeling data in determining wholesale UNE prices is denied, since it is beyond the scope of the B-Fund proceeding.

Any development or use of HM 5.3 modeling results in the B-Fund proceeding in no way prejudices how the Commission may address UNE pricing issues or resolve any pending proposals in the UNE pricing proceeding. If any party in the UNE proceeding were to seek to introduce or rely upon any modeling results that might be developed in the B-Fund proceeding, that party would have the burden to justify such a proposal and opposing parties would have the opportunity to protest. Accordingly, there is no basis to issue a ruling at this point in time either prohibiting (or permitting) the possible use of modeling results in the UNE proceeding.

IT IS RULED that:

1. California Association of Competitive Telephone Companies' (CALTEL) motion is denied insofar as it seeks a ruling either 1) to delay cost proxy updates in Phase II of the B-Fund proceeding until CALTEL's price cap proposal in the UNE proceeding is resolved, or 2) to prohibit use of B-fund cost proxy updates by AT&T and Verizon as a basis for any UNE rate proposals in R.93-04-003/I.93-04-002.

2. If any party in the UNE proceeding were to seek to introduce or otherwise rely upon any cost modeling developed in the B-Fund proceeding, that party would have the burden to justify such a proposal and opposing parties would have the opportunity to respond.

3. This ruling shall be served on the service lists in both R.06-06-028 and in R.93-04-003/I.93-04-002.

Dated February 14, 2008, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Commissioner

/s/ RACHELLE B. CHONG

Rachelle B. Chong
Commissioner